

EXHIBIT P

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC WATER TECHNOLOGY
LLC et al.,

Plaintiff(s),

v.

RYAN R WEAR et al.,

Defendant(s).

No. 2:24-cv-01164-TL

JOINT MOTION TO REMAND

NOTING DATE: TO BE DETERMINED
PURSUANT TO 11 U.S.C. § 362(a)(1)

THE UNDERSIGNED PARTIES HEREBY SUBMIT THIS JOINT MOTION TO REMAND WITH A “TO BE DETERMINED” HEARING DATE IN OBSERVANCE OF THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(a)(1), AND CONTROLLING NINTH CIRCUIT CASE LAW REGARDING REMOVAL AND REMAND PROCEDURES IN THE CONTEXT OF A BANKRUPTCY STAY, TO ENSURE THEY HAVE PRESERVED THEIR RIGHTS TO REMAND UNDER 28 U.S. CODE § 1447 AND APPLICABLE LAW.

THE UNDERSIGNED PARTIES SHALL NOTE THIS REQUEST FOR HEARING UPON THE EARLIER OF (1) AN ORDER BY THE BANKRUPTCY COURT GRANTING THE UNDERSIGNED PARTIES RELIEF FROM STAY TO SEEK REMAND OR (2) FURTHER DIRECTION BY THIS COURT.

STIPULATION

1. Plaintiffs in this action (the “Pacific Parties”), by and through their undersigned counsel, Defendants Kevin and Elizabeth Nooney, by and through their undersigned counsel, and Defendants Ryan Wear and Elizabeth Swain, in the state court action captioned as *Pacific Water Technology, LLC et al v. Ryan Wear et al.*, Case No. 24-2-2887-31 (the “Pacific Parties Action”), by and through their undersigned counsel, respectfully submit this Joint Stipulation to Remand¹:

2. On April 16, 2024, the Pacific Parties – who at that time consisted of just seven investors with alleged losses in excess of \$15 million – brought this action in *state* court for alleged violations of the Securities Act of Washington and other derivative *state* law violations against WST. *See* April 16, 2024 Complaint, Pacific Parties Action. Bender Decl., Ex. 1. Pacific Parties allege that they were induced to invest millions in what they were told were franchises in WST’s growing and profitable network of purified water dispensary machines. *Id.* ¶¶54-64. They contend that in reality these transactions – which consistent of multiple agreements between them and WST and third parties, including banks such as UniBank and First Fed – constituted securities under the state law test for investment contracts. RCW 21.20.010(17)(a) (defining “security” under RCW 21.20 to include “investment contract”); Ex. 1 ¶70 (summarizing elements of alleged investment contract sold by Defendants). Defendants deny liability and reserve any defenses to said allegations.

3. On April 26 2024, Pacific Parties obtained a Temporary Restraining Order (“April 26 TRO”) enjoining Defendants, including Ideal Property Investments, LLC (“Ideal”), from dissipating assets and from engaging in transactions outside the ordinary course of business. Bender Decl., Ex. 3. In issuing the April 26 TRO, the Court found that Pacific Parties had demonstrated “a clear legal or equitable right to rescission of the securities transactions

¹ Defendants deny liability and reserve all defenses to the underlying claims.

1 with Defendants” under Washington state law. Pacific Parties and Defendants subsequently
2 agreed to extend the April 26 TRO and continue the hearing on Pacific Parties’ Motion for
3 Preliminary Injunction, which prior to removal was scheduled for the following upcoming date:
4 August 30, 2024. Bender Decl. ¶9.

5 4. On April 17, 2024, First Fed Bank (“First Fed”) commenced an action in King
6 County Superior Court to petition for the appointment of a general receiver over Ideal, i.e. one
7 of the Defendants in the Pacific Parties Action. *See In re Receivership of Ideal Property*
8 *Investments, LLC*, KCSC Cause No. 24-2-08418-5 SEA. On May 3, 2024, King County
9 Superior Court subsequently appointed a General Receiver over Ideal. Order Appointing
10 Receiver in *In re Receivership of Ideal Property Investments, LLC*, Bender Decl., Ex. 4.

11 5. By operation of law, the May 3 Order Appointing Receiver in *In re Receivership*
12 *of Ideal Property Investments, LLC*, imposed an *automatic stay* prohibiting any party from the
13 “commencement or continuation, including the issuance or employment of process, of a
14 judicial, administrative, or other action or proceeding against the persons over whose property
15 the Receiver is appointed...” (the “Automatic Stay”). *Id.* ¶ 2.a; *see also* RCW 7.60.110. The
16 May 3 Order Appointing Receiver made clear that the Automatic Stay was “applicable to all
17 persons” and would continue “until this receivership is terminated” unless otherwise ordered
18 by the Court. *Id.* ¶ 2.²

19 6. On June 20, 2024, Pacific Parties amended their complaint in the Pacific Parties
20 Action. Bender Decl., Ex. 2. Pacific Parties’ amendment added First Fed and UniBank as
21 Defendants, alleging that, in connection with issuing several dozen small business loans to
22

23 ² On May 14, 2024, First Fed commenced a separate proceeding in King County Superior Court for the
24 appointment of a general receiver over Defendant Creative Technologies LLC d/b/a “WaterStation Technology”
25 (“WST”). *See In re Receivership of Creative Technologies, LLC*, KCSC Cause No. 24-2-10753-3 SEA. King
County Superior Court subsequently appointed a General Receiver over Defendant Creative Technologies d/b/a
“WaterStation Technology” (“WST”). Order Appointing Receiver in *In re Receivership of Creative Technologies,*
LLC, Bender Decl., Ex. 5.

1 investors for purposes of investing in WST, the banks engaged in behavior that rendered them
2 liable under Chapter 21.20 RCW as substantial contributors to the sale of WST's unregistered
3 securities. *Id.* ¶177. Pacific Parties also asserted various derivative common law claims such as
4 breach of fiduciary duty and negligent misrepresentation on the theory that the bank's behavior
5 went far beyond the traditional lender-borrower relationship. *See generally id.* Because Pacific
6 Parties' direct claims against the banks brought into issue the enforceability of personal
7 guaranties the banks obtained from the individuals ("Individual Guarantors") who organized
8 the LLCs that make up the bulk of the Pacific Parties' group of plaintiffs, Pacific Parties also
9 added these Individual Guarantors as plaintiffs in the Pacific Parties Action for the primary
10 purpose of seeking declaratory and injunctive relief regarding the unenforceability of the
11 aforementioned personal guaranties. Bender Decl. ¶8.

12 7. On July 12, 2024, the Hon. Judge William Steffener of Snohomish County
13 Superior Court entered an Order consolidating 12 separate WaterStation related cases, while
14 reserving the various parties' rights to separate trials, stating: "This order does not prejudice a
15 party's right to move for a separate trial as permitted under CR 42." Bender Decl., Ex. 6.

16 8. Despite the continued existence of the Automatic Stay, on August 1, 2024, First
17 Fed, by now a Defendant in the Pacific Parties Action along with Ideal Property Investments,
18 LLC, filed a Notice of Removal in the Pacific Parties Action ("August 1 Notice of Removal"),
19 relying on the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, 1711–15 ("CAFA").
20 Dkt. 1.

21 9. On August 6, 2024, Pacific Parties filed a Notice of Dismissal Without Prejudice
22 As to All Claims Against First Fed Defendants. Dkt. 10.

23 10. On August 15, 2024, Pacific Parties, as agreed, filed a Notice of Dismissal
24 Without Prejudice as to All Claims Against UniBank Defendants. Dkt. 12.

25 11. On August 16 and August 21, 2024, Pacific Parties filed Notices of Dismissal

Without Prejudice as to Certain Claimants, removing from this action the Individual Guarantors that had previously been added. Dkt. 13, Dkt. 14.

12. On August 21, 2024, Pacific Parties filed a Notice of Dismissal Without Prejudice as to All Claims Against Houk Defendants. Dkt. 15.

12. The August 1 Notice of Removal violated the Automatic Stay in *In re Receivership of Ideal Property Investments, LLC*, and therefore the removal attempt was void and remand is required.³

13. In addition, the plain text of CAFA’s mass action provision excludes “claims that have been consolidated or coordinated solely for pretrial proceedings,” 28 U.S.C. § 1332(d)(11)(B)(ii)(IV), and Judge Steffener’s July 12 Order consolidating the cases was clear it did not prejudice any party’s right to a separate trial, *see* Bender Decl. Ex. 6, and the moving parties made clear at the consolidation hearing that the request was for pretrial proceedings only. August 30, 2024 Suppl. Bender Decl., Ex. A. Moreover, the dismissal of the Individual Guarantors from the Pacific Parties Action leaves 63 claimants seeking monetary relief in this action, which is well below CAFA’s mandatory numerosity threshold of over 100 claimants with “monetary relief claims[.]” 28 U.S.C. §§ 1332(d)(11)(A). Therefore, remand is appropriate.⁴

³ The language of the automatic stay provision of Washington’s receivership statute, RCW 7.60.110(1)(a), is virtually identical to the automatic stay under the U.S. Bankruptcy Code. 11 U.S.C. § 362(1)(a) (both statutes prohibit “the commencement or continuation, including the issuance or employment of process, of a judicial, administration or other action or proceeding against” the debtor or person whose property the receiver was appointed). The May 3 Order Appointing Receiver in *In re Receivership of Ideal Property Investments, LLC*, incorporated this same language for purposes of the Automatic Stay, and made clear that the stay extends until termination of the case absent further order by the court. Bender Decl., Ex. 4, ¶ 2. Interpreting such language in the bankruptcy stay context, the 9th Circuit has instructed that the automatic stay prohibits removing a state case to federal court. *Sec. Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1007 n.3 (9th Cir.1997) (“[A party] could not remove the state court proceeding until the bankruptcy court officially lifted the automatic stay.”); *see also Bank of New York Mellon ex. rel. Certificateholders of CWALT, Inc. v. Enchantment at Sunset Bay Condo. Ass’n*, 2 F.4th 1229, 1235 (9th Cir. 2021) (“We have consistently reapplied *In re Schwartz* to affirm that any violations of the automatic stay provision are indeed void—full stop.” (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992))).

⁴ In addition, Pacific Parties are the alleged holders of alleged unregistered securities allegedly issued by

1 Now, therefore, the undersigned parties stipulate to entry of the following order
2 remanding the above-captioned case to the Washington Superior Court for Snohomish County.

3 **[PROPOSED] ORDER**

4 Pursuant to the parties' stipulation, it is so ordered. The case is remanded to the
5 Washington Superior Court for Snohomish County. The Clerk of this Court is directed to
6 close the case.

7
8 DATED this ____ day of _____, 2024.

9 _____
10 Tana Lin
United States District Court Judge

11 //

12 //

13
14 //

15
16
17
18
19
20
21
22 _____
23 Defendants, and their claims would not exist but for the rights, duties, and obligation related to such alleged
24 securities. In issuing the April 26 TRO, the Snohomish County court explicitly ruled that Plaintiffs had
25 demonstrated "a clear legal or equitable right to rescission of the securities transactions with Defendants" under
Washington state law. Bender Decl., Ex. 3 at 2. Accordingly, this action should be exempt from removal
jurisdiction under CAFA because Pacific Parties' claims "relate[] to the rights, duties (including fiduciary duties),
and obligations related to or created by or pursuant to any securities[.]" 28 U.S.C. § 1453(d)(3); *see, e.g., Eminence*
Investors, L.L.P. v. Bank of New York Mellon, 782 F.3d 504 (9th Cir. 2015) (applying CAFA's securities
exception to claims by holders of mortgage-backed securities).

1 We certify that this memorandum contains 1,718 words, in compliance with the Local
2 Civil Rules

3 STIPULATED AND PRESENTED this 30th day of August, 2024, by:

4 CORR CRONIN LLP

PATRICK L. VAIL PLLC

5 s/ John T. Bender

/s Patrick L. Vail

6 John T. Bender, WSBA No. 49658
7 Kristen F. Barnhart, WSBA No. 51135
8 1015 Second Avenue, Floor 10
9 Seattle, WA 98104-1001
10 (206) 625-8600
11 jbender@corrchronin.com
12 kbarnhart@corrchronin.com
13 *Counsel for Pacific Parties*

Patrick L. Vail, WSBA No. 34513
1000 2nd Ave St 1770
Seattle, WA 98104
Email: pvail@pvaillaw.com
*Counsel for Defendants Ryan Wear and
Elizabeth Swain*

11 ARD LAW GROUP PLLC

BENDER LAW PLLC

12 s/ Joel Ard

s/ John A. Bender Jr.

13 Joel Ard
14 PO Box 11633
15 Bainbridge Island, WA 98110-5633
16 (206) 701-9243
17 joel@ard.law
18 *Attorneys for Defendants Kevin and
Elizabeth Nooney*

John A. Bender Jr., WSBA No. 19540
4634 East Marginal Way S I Suite C-150
Seattle, WA 98134
(206) 577-7987
John@bender-law.com
*Attorneys for Plaintiff Axial Tilt, LLC and
MOD Holdings, LLC*

18 SMITH CURRIE OLES

BORDE LAW PLLC

19 s/ Trevor H. Lane

s/ Manish Borde

20 Samuel E. Baker Jr., WSBA No. 3872
21 Trevor H. Lane, WSBA No. 55739
22 600 University St, Ste 1800
23 Seattle, WA 98101-3930
24 (206) 623-3427
25 sebak@smithcurrie.com
thlane@smithcurrie.com
Attorneys for Plaintiff Dennis Demirjian

Manish Borde, WSBA No. 39503
1700 Seventh Ave., Ste 2100
Seattle, WA 98101
(206) 531-2722
mborde@bordelaw.com
Attorneys for Plaintiff Emmatoine LLC

SEYFARTH SHAW LLP

s/ Andrew R. Escobar

Andrew R. Escobar, WSBA No. 42793
999 Third Ave., Ste 4700
Seattle, WA 98104
(206) 946-4910
aescobar@seyfarth.com
*Attorneys for Plaintiff JRC Real Estate III,
LLC*

LAW OFFICE OF G. MICHAEL ZENO,
JR., P.S.

s/ Michael Zeno, Jr.

G. Michael Zeno, Jr., WSBA No. 14589
135 Lake St. S Ste 257
Kirkland, WA 98033
(425) 947-8050
mikez@zenolawfirm.com
*Attorneys for Plaintiff Tanushka Water
Vending LLC and Aarana Water Vending
LLC*

MDK LAW

s/ Alex Larkin

Alex Larkin, WSBA No. 36613
Unsa Manzoor, WSBA No. 60440
777 108th Ave. NE, Ste 2000
Bellevue, WA 98004
(425) 455-9610
alarkin@mdklaw.com
umanzoor@mdklaw.com
Attorneys for Plaintiff Rex Ventures, LLC

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

Certified and dated this 30th day of August, 2024, by

s/ Kristen F. Barnhart

John T. Bender, WSBA No. 49658
Kristen F. Barnhart, WSBA No. 51135
CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, WA 98104-1001
Telephone: 206-625-8600
jbender@corrchronin.com
kbarnhart@corrchronin.com
Counsel for Pacific Parties

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 30, 2024, I electronically filed the foregoing document
3 with the Clerk of the Court using the CM/ECF system, which will send notification of such
4 filing to those attorneys of record registered on the CM/ECF system. All parties (if any) shall
5 be served in accordance of the Federal Civil Rules of Procedure.

6 DATED this 30th day of August, 2024.

7 s/ Wen Cruz
8 Wen Cruz, Legal Assistant
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25